Filed 10/12/16 In re Aria G. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re ARIA G., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B271376 (Super. Ct. No. 15JD-00250) (San Luis Obispo County)
SAN LUIS OBISPO COUNTY DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. ASIA G., Defendant and Appellant.	

Asia G. (mother) appeals from an order terminating her parental rights with respect to three-year-old Aria G. (Welf. & Inst. Code, § 366.26.)[1] Appellant claims that the trial court erred in finding that the beneficial parent-child relationship exception does not apply. (§ 366.26, subd. (c)(1)(B)(i).) We affirm.

Facts and Procedural History

On July 27, 2015, San Luis Obispo County Department of Social Services (DSS) detained Aria after mother overdosed on alcohol and narcotic pills in a vehicle with Aria. Mother was transported to the hospital where she threatened to kill herself and was placed on a psychiatric hold. Mother had a chronic history of mental illness and

[1] All statutory references are to the Welfare & Institutions Code.

substance abuse. Aria's father, Adam G., was serving a prison sentence for voluntary manslaughter.

DSS filed a petition for failure to protect (§ 300, subd. (b)) and no provision for support (§ 300, subd. (g)). The trial court sustained the petition and bypassed services based on mother's failure to reunify with three older children due to unresolved substance abuse problems. (§ 361.5, subd. (b)(11).) The trial court placed Aria with the maternal uncle and his fiancée, and ordered supervised visits. During the visits, Aria cried and asked whether mother was "still sick." Although the quality of the visits improved with time, Aria did not ask about mother.

DSS reported that Aria was flourishing in her uncle's home and the likelihood of adoption was extremely high. Aria called her uncle and his fiancée "Daddy and Mommy" and wanted to live with them "forever and ever."

Mother filed a section 388 petition for reunification services. At the combined section 388/366.26 hearing, evidence was received that mother was in a sober living facility, was clean and sober, had a part-time job, and was undergoing counseling. On cross-examination, mother stated that she had been using drugs for 15 years and her longest period of sobriety was 14 months back in 2003. In 2012, mother graduated from a residential treatment program but relapsed a few months later just before Aria was born.

Robyn Yakush, the adoption social worker, opined that it was not in Aria's best interests to offer reunification services. Aria's relationship with mother was that of a "friendly playmate" but Aria felt unsafe when alone with mother. At the last visit before the section 366.26 hearing, Aria announced, "It's time for Mommy to go home now."

Denying the section 388 petition, the trial court found that there were no changed circumstances and that it was not in Aria's best interest to order reunification services. "The fact that Aria still focuses on safety and concern about her safety underscores the court's concern." The trial court found that Aria was adoptable and that none of the statutory exceptions to adoption applied.

Beneficial Parent-Child Relationship Exception

Mother argues that the trial court erred in finding that the parent-child beneficial relationship exception does not apply. (§ 366.26, subd. (c)(1)(B)(i).) We review for substantial evidence and determine whether the trial court abused its discretion. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) "Because a parent's claim to such an exception is evaluated in light of the Legislature's preference for adoption, it is only in exceptional circumstances that a court will choose a permanent plan other than adoption. [Citation.]" (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.)

To establish the parent-child relationship exception, mother must show she maintained regular contact and visitation, and that Aria would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i); *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) It is a two prong test.[2] "The exception applies only where the [trial] court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." (*Ibid.*) Mother must show that severing "the natural parent-child relationship would deprive [Aria] of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.]" (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

The existence of a beneficial relationship is determined by the age of the child, the portion of the child's life spent in parental custody, the quality of the interaction between parent and child, and the child's particular needs. (*In re Angel B., supra*, 97 Cal.App.4th at p. 467; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689.) The

[2] Mother argues that *In re Bailey J., supra,* 189 Cal.App.4th at p. 1315 violates her due process rights because it establishes a third prong: that the parent show that the child's relationship with the unfit parent is superior to the benefits of adoption and constitutes "a '*compelling reason* for determining that termination would be detrimental.' (§ 366.26, subd. (c)(1)(B), italics added.)" (*Id.*, at p. 1315.) We reject the argument because the trial court did not rely on *In re Bailey J.* The court in *In re Bailey J.* applied a well-established two-prong standard and explained that the parent-child relationship "exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.' [Citation.] Evidence of 'frequent and loving contact' is not sufficient to establish the existence of a beneficial parental relationship. [Citation.]" (*Id.*, at pp. 1315-1316.)

parent must show "more than frequent and loving contact, an emotional bond with the child, or pleasant visits. [Citation.]" (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

Mother's contact with Aria never advanced beyond supervised visits. Mother expressed love for Aria and described the visits as "warm". But the visits lacked the depth to establish a parent-child beneficial relationship. When Aria was left alone with mother, Aria was anxious and concerned about her safety. Mother and Aria were "friendly playmates" but mother did not assume a parental role in the child's life. (See e.g., *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1301-1302.) No social worker, therapist, psychologist, or caregiver reported that severing the parent-child relationship would be detrimental to Aria. (See e.g., *In re Amber M.*, *supra*, 103 Cal.App.4th at p. 689; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207.) At all proceedings under section 366.26, the trial court must consider the wishes of the child and act in the best interests of the child. (§ 366.26, subd. (h)(1).)

Based on Aria's age and needs, the trial court reasonably concluded that Aria's long-term emotional and development interests would be better served by the permanency of adoption. It was a "'quintessentially'" discretionary decision but not a close call. (*In re Bailey J.*, *supra*, 189 Cal.App.4th 1315.) "The reality is the childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it." (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038.)

The judgment (order denying section 388 petition and order terminating parental rights) is affirmed.

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YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

Donna Balderston Kaiser, under appointment by the Court of Appeal, for Appellant.

Rita L. Neal, County Counsel, Leslie H. Kraut, Senior Deputy County Counsel, for Respondent.